IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 240 of 2006
To
FIRST APPEAL No. 323 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION - Appellant(s)
Versus
PARVATIBEN VITTHALDAS & 2 - Defendant(s)

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Appearance :
Mr.S.N.Shelat,learned Senior Advocate with MR MITUL K SHELAT for Appellant.
MR AJ PATEL for Defendant No. 1.
Mr.J.K.Shah,learned Assistant Government Pleader for Defendant Nos.2 and 3.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/05/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated January 20,2005, rendered by the learned Joint District Judge (F.T.C.No.3), Bharuch in Land Acquisition Reference No.797/2002 to Land Acquisition Reference No.880/2002, by which the claimants have been awarded additional amount of compensation at the rate of Rs.19.50 Ps. per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.5/- per sq.mt. by his award dated October 17,2000.

2. The Gujarat Industrial Development Corporation (“GIDC” for short) made a proposal to acquire the lands of village Kharchi, District Bharuch for the

public purpose of construction of residential complex of GIDC, Ankleshwar. On perusal of the said proposal, the State Government was satisfied that the lands of village Kharchi mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued which was published in the Official Gazette on May 9,1997. The owners of the lands proposed to be acquired were served with notices and they had filed their objections. After considering the same, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Kharchi specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of residential complex of GIDC, Ankleshwar. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on September 7,1998. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the

rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated October 17,2000 offered compensation to the claimants at the rate of Rs.5/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as Land Acquisition Reference No.797/2002 to Land Acquisition Reference No.880/2002.

3. On behalf of the claimants witness Natvarbhai Ranchhodbhai Patel was examined at Exh.18. The witness stated that each claimant was earning net income of Rs.1,24,000/- per year per Hectare from the sale of agricultural produces such as green Tuwar, dry Tuwar and Juwar. In order to substantiate his claim that the lands acquired were fertile, the witness produced VII-XII extracts relating the lands

acquired. According to this witness all facilities such as railway station, police station, RCC roads, Post Office, Telephone Exchange, Primary School, Farmers Co-operative Society, etc. were available in the village and, therefore, they were entitled to enhanced compensation. The witness mentioned that lands from adjoining village i.e. village Gadkhol were acquired for the public purpose of GIDC with reference to which the Reference Court had awarded compensation at the rate of Rs.875/- per Are and as the lands acquired from village Gadkhol were similar in all respects to the lands acquired in the instant case, the claimants were entitled to enhanced compensation on the basis of said previous award. The witness produced certified copy of the judgment of the Reference Court relating to the lands of village Gadkhol at Exh.11.

This witness was cross-examined by the learned counsel for the State Government as well as learned counsel for the acquiring body but nothing substantial could be elicited nor the assertion made by the witness that the lands which were previously acquired from village Gadkhol were similar in all respects to the lands acquired in the instant case

could be demonstrated to be untrue.

4. Another witness, namely, Omprakash Dahyalal, who was Valuer of the lands, was examined by the claimants at Exh.180. The witness stated that the village Gadkhol was situated at a distance of 2 Kms. from village Kharchi and that he had valued the price of the lands of village Gadkhol at Rs.55/- per sq.mt. However, in cross-examination by the learned counsel for the acquiring body, it was admitted by the said witness that he had no personal knowledge about the lands acquired. It was denied by him that he had submitted his report without preparing panchanama of the lands acquired. During the cross-examination by the learned District Government Pleader it was admitted by him that he had not mentioned in his report as to what was the price of the lands sold during the last five years.

5. It may be mentioned that no witness was examined either on behalf of the State Government or on behalf of the acquiring body.

6. After the claimants had adduced evidence, the

learned advocate for the claimants had presented his written submissions on December 6,2004. Thereafter, the learned counsel for the acquiring body had submitted a list of documents on December 13,2004 and sought permission of the Court to produce certain documents for consideration of the Court. The learned advocate for the claimants had made an endorsement to the effect “seen” on the said list. The learned Joint District Judge and Additional Sessions Judge, 3rd FTC, Bharuch passed an order dated December 13,2004 to the effect “Recorded”. Alongwith the list, the acquiring body had produced previous award rendered by the learned 3rd Joint Civil Judge (SD), Bharuch relating to the lands of this very village rendered in Land Reference Case Nos.556/89 and Land Reference Case No.557/89 on March 8,2001 for consideration of the Court.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of village Gadkhol was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in

the instant case. The learned Judge noticed that Notification under Section 4(1) of the Act was published in the Official Gazette on January 22,1979 with reference to the lands which were acquired from village Gadkhol whereas in the instant case it was published on May 9,1997 and in view of gap of time in publication of Notifications issued under Section 4 of the Act, the claimants were entitled to the benefit of rise in prices of the lands at the rate of 10% per annum. In the ultimate analysis the Reference Court has awarded in all compensation to the claimants at the rate of Rs.24.50 Ps. per sq.mt. by the impugned award, giving rise to the above numbered appeals.

8. Mr.S.N.Shelat, learned senior advocate, with Mr.Mitul K.Shelat, learned advocate for the appellant, contended that for awarding enhanced compensation previous award of the Reference Court relating to the lands of village Gadkhol could not have been made basis when previous award of the Reference Court relating to the lands of this very village was available and, therefore, the impugned award deserves to be set aside. It was argued that village Kharchi from which the lands were acquired

in the instant case is situated in Jagadiya Taluka whereas village Gadkhol is situated in Ankleshwar Taluka as a result of which previous award of Reference Court relating to the lands of village Gadkhol should not have been relied upon by the Reference Court for the purpose of awarding enhanced compensation to the claimants. According to the learned counsel for the appellant, the distance between village Gadkhol and village Kharchi was about 9 Kms. and, therefore, the previous award of Reference Court relating to the lands of village Gadkhol could not have been relied upon by the Reference Court for awarding enhanced compensation. The learned counsel pleaded that wrong principles have been applied by the Reference Court while determining the amount of compensation payable to the claimants and, therefore, the appeals deserve to be accepted.

9. Mr.A.J.Patel, learned counsel for the claimants contended that no witness was examined on behalf of the State Government or the acquiring body nor any questions were put to any of the witnesses examined by the claimants regarding the relevancy of previous award of the Reference court relating to the lands of

this very village and, therefore, the Reference Court was justified in not taking into consideration the said award while determining the market value of the lands acquired in the instant cases. According to the learned counsel for the claimants, after presentation of written submissions by the learned counsel for the claimants on December 6,2004, the previous award of the Reference Court relating to the lands of this very village was sought to be produced by the acquiring body and as the claimants had no opportunity to point out to the Reference Court that the previous award of the Reference Court relating to the lands of this very village was not a relevant piece of evidence, the matters should be remanded to the Reference Court with liberty to both the sides to lead evidence in support of their respective claims.

10. Mr.Jaswant K.Shah, learned Assistant Government Pleader for the respondent Nos.2 and 3, supported the stand taken by the learned counsel for the appellant and contended that for the reasons mentioned by the learned counsel for the appellant, the impugned award should be set aside.

11. This Court has heard the learned counsels for

the parties at length and in great detail. This court has also considered the documents forming part of the paper book which is supplied by the learned counsel for the appellant.

12. From the record of the case, it is evident that what is relied upon by the Reference Court for the purpose of awarding enhanced compensation is previous award of the Reference Court relating to the lands of village Gadkhol. The Reference Court has not considered the previous award of the Reference Court relating to the lands of this very village, which was produced on the record of the case at Exh.196 nor the Reference Court has considered the Certificate produced by the acquiring body at Exh.195, which indicated that the distance between village Gadkhol and village Kharchi is 9 Kms. According to the acquiring body, the previous award of the Reference Court relating to the lands of village Jitali, Taluka Ankleshwar, District Bharuch produced at Exh.189 is also a relevant piece of evidence and should have been taken into consideration by the Reference Court while determining the market value of the lands acquired in the instant case. The judgment impugned in the appeals does not indicate that

Exh.189 or Exh.195 or Exh.196 is considered by the Reference Court. Moreover, as no witness was examined either by the State Government or acquiring body, the claimants had no opportunity to refute the claim of the acquiring body that the previous award of the Reference Court relating to the lands of village Kharchi produced at Exh.196 or for that matter the previous award of the Reference Court relating to the lands of village Jitali, which was produced at Exh.189 was not a relevant piece of evidence and, therefore, should not be taken into consideration by the Court while determining the market value of the lands acquired in the instant case. From the record of the case it is evident that the conclusion reached by the Reference Court is not warranted nor justifiable on the evidence placed before it. A bare perusal of the judgment impugned in the appeals makes it evident that settled legal position of law in determining compensation is not taken into consideration and, therefore, the conclusions reached will have to be regarded as unsustainable on settled principles of law. It is well established that the Reference Court has to determine the compensation on legal, valid, reliable and acceptable relevant evidence and is not supposed

to base its conclusion on feats of imagination. The common award impugned is vitiated because of non-consideration of the documents produced on the record of the case. Therefore, this Court is of the opinion that the judgment impugned in the appeals is vitiated by error apparent on the face of the record and interest of justice would be served, if the matters are remitted to the Reference Court for fresh decision on the point after affording the parties opportunity to lead fresh evidence in support of their respective claims.

13. For the foregoing reasons, all the appeals succeed. The common judgment and award dated January 20,2005, rendered by the learned Joint District Judge (F.T.C.No.3), Bharuch in Land Acquisition Reference No.797/2002 to Land Acquisition Reference No.880/2002 awarding compensation to the claimants at the rate of Rs.24.50 Ps. per sq.mt. for their acquired lands is hereby set aside. The matters are remitted to the Reference Court for deciding the same afresh after permitting the parties to lead fresh evidence in support of their respective claims. It is clarified that pursuant to order passed in Civil Application No.1494 of 2006 to Civil Application No.1577 of 2006

the claimants have been permitted to withdraw 50% of the amount awarded by the Reference Court. The said amount shall be adjusted by the Reference Court while deciding the matters finally pursuant to this order.

It may be mentioned that the Notification under Section 4(1) of the Act for acquiring the lands from village Kharchi in the instant cases was published in the Official Gazette on May 9,1997 and, therefore, the Reference Court is directed to dispose of the References as early as possible and without any avoidable delay. Subject to the above-referred to directions, the appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs.

The Registry is directed to draw decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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